IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4600 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AGRICULTURE PRODUCE MARKET COMMITTEE, MAHUVA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4600 of 2003

MR BM MANGUKIYA for Petitioner No. 1-3

MR JT TRIVEDI for Respondent No. 1

MR DIPEN TRIVEDI, AGP, for Respondent No. 1

..... for Respondent No. 2-4

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 23/04/2003

ORAL JUDGEMENT

Learned advocate Shri Mangukiya seeks permission to delete respondent NO. 4. Permission granted. Respondent No. 4 stands deleted.

2. Rule. Service of rule is waived by learned AGP Shri Dipen Desai for respondents Nos. 1 and 2 and learned advocate Shri J.T. Trivedi for respondent No. 3. At the request of the learned advocates, the petition is finally heard today.

3. The petitioners have been aggrieved by an ex-parte ad-interim order dated 28.3.2003 passed by respondent No. 1 under the provisions of sec. 48 of the Gujarat Agricultural Products Markets Act, 1963 (hereinafter referred to as 'the Act').

4. Learned advocate Shri Mangukiya appearing for the petitioners has submitted that by virtue of the impugned ad-interim order passed by respondent No. 1, functioning of petitioner No. 1 Market Committee has come to a complete standstill because the resolutions, which had been passed by the Committee on and after 23.7.2002, have become ineffective by virtue of the impugned order. It has been submitted that it was not proper on the part of respondent No. 1 State to pass such an order, whereby the application filed by respondent No. 3 was practically allowed without hearing the other side i.e. the present petitioners. According to the learned advocate, the concerned authority ought to have heard both the sides and only thereafter an appropriate final order should have been passed.

5. On the other hand, learned advocate Shri J.T. Trivedi appearing for respondent No. 3, who is a nominated member of Mahuva Municipality, has submitted that only with an oblique motive respondent No. 3 was not sent the agenda and notices of the meetings, which had been convened after 23.7.2002 and, therefore, the ex-parte ad-interim order passed by the authority was just and proper. It has been submitted by him that formerly all notices were given to respondent No. 3 in his name by petitioner No. 1 committee, but subsequently, the petitioner committee had changed its practice without any rhyme or reason only with an oblique motive to see that respondent No.3 does not get a chance to attend the meetings. He has made submissions on the merits of the case so as to justify the requirement of the ex-parte ad-interim relief granted by the authority. As I do not desire to deal with the merits of the case, I do not propose to go into it. However, suffice it to state that according to the case of respondent No. 3, he

being a nominated member of the petitioner committee, he ought to have been sent notices in his individual name and the notices ought not to have been sent to him through Mahuva Municipality, who had nominated him to represent the municipality. According to the learned advocate, as respondent No. 3 did not get an opportunity to participate in the meetings convened by the petitioner committee, all business transacted by the petitioner committee in absence of respondent No. 3 should be declared null and void and the competent authority rightly did so by an ex-parte ad-interim relief granted in his favour when attention of the authority was drawn by respondent No. 3 to the aforesaid fact under the provisions of sec. 48 of the Act.

6. It has been submitted by him that in a writ petition this court should not interfere with an ex-parte ad-interim order because it would be open to petitioner No. 1 committee to approach respondent No. 1 for getting the said ex-parte ad-interim order vacated. According to him, instead of approaching the authority by filing a reply, the petitioner-committee had prayed for time and had procrastinated the hearing. It has been, therefore, submitted by him that this court should not interfere with the impugned order in its extra-ordinary jurisdiction under Articles 226 and/or 227 of the Constitution of India. He has relied upon a judgment delivered by the Hon'ble Supreme Court in the case of Sugarbai M. Siddiq and others v. Ramesh S Hankare reported in (2001) 8 SCC 477 as well as a judgment delivered by this court in case of M/s. Ciba Geigy Ltd. v. M/s. Sun Pharmaceutical Industries, 1992(2) GLR 1053 to substantiate his submission that this court should interfere only if the decision making process adopted by the authority was not proper. According to the learned advocate, in the instant case, there is no procedural irregularity in the impugned order and, therefore, this court should not interfere with the impugned order.

7. It has been further submitted by learned advocate Shri J.T. Trivedi that respondent No. 3 is ready and willing to go on with the hearing so that the matter can be heard at the earliest. He has also submitted that during the pendency of this petition, at a meeting convened on 22.4.2003 by the petitioner committee, it has been resolved to ratify the resolutions, which had been passed after 23.7.2002, and notice of the said meeting had been sent to respondent No. 3 in his name.

8. Learned AGP Shri Desai has submitted that the impugned order is just and proper and it is only an

ad-interim order and, therefore, this court should not interfere with the said order as the officer hearing on behalf of respondent No. 1 is ready and wiling to proceed further with the hearing even today as per the schedule. It has been submitted by him that several irregularities have been committed by petitioner No. 1 committee and, therefore, even an order has been passed for superseding the said committee. He has, however, fairly submitted that implementation of the said order of supersession has been stayed and, therefore, the committee is functioning at present.

9. I have heard the learned advocates at length. Looking to the peculiar facts of the case, in my opinion, respondent No 1 authority should not have passed the impugned ex-parte ad-interim order for the reason that, by virtue of the said order, the functioning of the petitioner committee has come to a grinding halt. By virtue of the impugned order, the implementation of all the resolutions passed by the committee has been stayed, and more particularly when the resolution passing the budget has also been stayed, it would be practically impossible for the committee to function. In my opinion, the concerned authority should have waited for some time and only after hearing both the sides, appropriate order should have been passed. In my opinion, by the impugned order, the authority has granted relief, which could have been granted only after hearing both the sides, and that too if the authority was convinced of the correctness of the allegations levelled in the application filed by respondent No. 3. Such a course could not have been adopted by the authority while passing an ex-parte ad-interim order. In my view, though the order is ex-pate and ad-interim in nature, virtually it has resulted into non-functioning of the petitioner committee.

10. In the circumstances, looking to the peculiar facts of the case, the implementation of the impugned order dated 28.3.2003 is stayed. The learned advocates have shown their willingness to go on with the hearing of the case before the authority immediately and upon instructions, the learned AGP has submitted that the authority can proceed with the hearing on 24th April 2003 at 5 p.m. Learned advocate Shri Mangukiya as well as learned advocate Shri Trivedi have submitted that they would not expect any notice for the adjourned hearing and they shall proceed further with the hearing on the next date of hearing i.e. 24.4.2003 at 5 p.m.

11. The authority shall hear the matter on 24.4.2003

and take final decision on or before 30.4.2003. If any order adverse to the petitioner committee is passed, the said order shall not be implemented for a period of 7 days from the date of communication of the said order to the petitioner committee. The order shall be sent to the concerned parties by registered post A.D. It is clarified that no observation on merits of the case has been made by this court in this order, and the authority is expected to decide the matter on its merits.

12. The petition stands disposed of as allowed to the above extent. Rule is made absolute with no order as to costs.

13. At this stage, learned advocate Shri Trivedi has prayed that implementation of this order be stayed for a period of 10 days. In my opinion, the said request does not appear to be reasonable and, therefore, is not accepted.

(A.R. Dave, J.)

(hn)